

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
Plaintiff,)	CIVIL ACTION No. 08-cv-2898 (JHS)
v.)	
)	
CITGO ASPHALT REFINING)	
COMPANY, et al.)	
Defendants.)	CONSOLIDATED
)	

In re Petition of FRESCATI SHIPPING)	
COMPANY, LTD., as Owner of the M/T)	CIVIL ACTION No. 05-cv-305 (JHS)
ATHOS I, and TSAKOS SHIPPING &)	
TRADING, S.A., as Manager of the M/T)	
ATHOS I, for Exoneration from or)	
Limitation of Liability)	
)	

ORDER

AND NOW, on this _____ day of _____, 2013, upon consideration of Defendants CITGO Asphalt Refining Company, CITGO Petroleum Corporation, and CITGO East Coast Corporation's Motion To Stay District Court Proceedings;

IT IS HEREBY ORDERED that the motion to stay is GRANTED and all proceedings in this Court are hereby stayed pending the filing of CARCO's petition for writ of certiorari in the Supreme Court of the United States and a final disposition by the Supreme Court of the United States.

SO ORDERED:

J.

Area No. 9 in the Delaware River on November 26, 2004, resulting in a massive oil spill. These cases were tried before the Honorable John P. Fullam for 41 days in the fall of 2010 and on April 12, 2011 Judge Fullam issued his Adjudication exonerating CARCO from any liability.

2. On April 20, 2011, due to Judge Fullam's retirement from the bench, these cases were reassigned to the Honorable Joel H. Slomsky.

3. On June 10, 2011, Plaintiffs, Frescati Shipping Company, Ltd., Tsakos Shipping & Trading, S.A and the United States Government appealed to the Third Circuit Court of Appeals.

4. On May 16, 2013 the Third Circuit Court of Appeals issued an opinion affirming in part, vacating in part, and remanding in part.

5. CARCO filed a petition for rehearing *en banc* with the Third Circuit Court of Appeals on July 1, 2013. The petition was denied by Order dated July 12, 2013, and the Third Circuit modified its prior opinion.

6. On July 22, 2013 the Third Circuit Court of Appeals issued a certified judgment in lieu of a formal mandate in the two consolidated appeals entitled, *Frescati Shipping Co Ltd and Tsakos Shipping and Trading, et al v. Citgo Asphalt Refining Company, et al*, Case No. 11-2576 and *United States of America v. Citgo Asphalt Refining Company, et al*, Case No. 11-2577, stating that "the certified judgment which the Court issued in lieu of a formal mandate is to be treated in all respects as a mandate".

7. On July 23, 2013, a certified copy of the May 16, 2013 Order of the Court of Appeals, affirming in part, vacating in part, and remanding in part to this Court for further proceedings, was filed in this Court.

8. On or before October 10, 2013, CARCO will be filing a petition for writ of certiorari in the Supreme Court of the United States.

9. The Third Circuit's remand encompasses numerous issues, all of which will be the subject of CARCO's petition for writ of certiorari.

10. CARCO respectfully requests a stay of all proceedings in this Court pending the filing of CARCO's petition for writ of certiorari in the Supreme Court of the United States and a final disposition by the Supreme Court of the United States.

11. A stay of all proceedings in this Court will avoid a potential conflict with a Supreme Court directive as well as potentially unnecessary, duplicative or inconsistent proceedings. Moreover, a stay will promote judicial economy and efficiency, and minimize the unnecessary expenditure of time and money by the parties.

12. Once there is a final disposition by the Supreme Court with respect to CARCO's petition for writ of certiorari, this Court and the parties will then have the certainty and finality to proceed with the case on remand, assuming such proceedings are necessary, in the most efficient manner.

13. Under the applicable law, this Court has the inherent power to issue a stay under these circumstances in order to control its docket efficiently and in the interests of justice.

Accordingly, it is respectfully requested that this Honorable Court enter an order in substantially the form attached hereto staying all proceedings in this Court pending the filing of CARCO's petition for writ of certiorari in the Supreme Court of the United States and a final disposition by the Supreme Court of the United States.

Respectfully submitted,

CHAFFE McCALL, L.L.P.

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CITGO East Coast Corporation*

Dated: July 25, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that service of true and correct copies of this Motion to Stay District Court Proceedings and accompanying Memorandum of Law and proposed Order was made to the following counsel on the below-listed date, via ecf filing and electronic mail:

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Consistent with its inherent authority to manage the cases before it, this Court “has broad discretion to stay proceedings” in the interest of convenience and efficiency. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). In deciding whether to grant a stay, the court may consider the extent to which a stay would prejudice the non-moving party, whether the movant would suffer a hardship or inequity in the absence of a stay, and whether a stay would promote judicial economy. *Rhodes v. Independence Blue Cross*, 2012 WL 447544, at *3 (E.D. Pa. Feb. 9, 2012).

A stay will often be warranted if proceedings in another tribunal have the potential to resolve or at least narrow the issues in dispute. *Id.*; *see also Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n. 6 (1998); *Merritt-Chapman & Scott Corp. v. Pa. Tpk. Comm’n*, 387 F.2d 768, 773 (3d Cir. 1967). Indeed, the district courts have frequently exercised their inherent authority to issue stays if a grant of certiorari and decision on the merits by the U.S. Supreme Court would stand to affect the outcome of the proceedings before them. *See Coombs v. Diguglielmo*, 2004 WL 1631416 (E.D. Pa. July 21, 2004); *Smith v. Gallegos*, 2009 WL 5217360 (D. Kan. Dec. 30, 2009); *NGV Gaming, Ltd. v. Harrah’s Operating Co.*, 2008 WL 4951587 (N.D. Cal. Nov. 18, 2008); *Michael v. Ghee*, 325 F. Supp. 2d 829 (N.D. Ohio 2004); *Peaceable Planet, Inc. v. Ty, Inc.*, 2004 WL 1574043 (N.D. Ill. July 13, 2004); *see also United States v. Staton*, 1996 WL 465841, at *8 (4th Cir. Aug. 16, 1996) (unpublished) (noting that “to conserve judicial resources by avoiding potential piecemeal litigation” the district court on remand granted a continuance while the appellant sought certiorari).

The cases at bar have been remanded to this Court “for further proceedings consistent with” the Third Circuit’s opinion. (*See* Doc. No. 652 in Case No. 05-305, Doc.

No. 370 in Case No. 08-2898). Yet nothing in the mandate imposes a timetable on these further proceedings or in any way precludes a stay while CARCO pursues relief in the Supreme Court. In the present circumstances, this Court should exercise its discretion—consistent with the mandate—and grant a stay. *See United States v. Robinson*, 390 F.3d 833, 837 (4th Cir. 2004) (“The district court’s decision to continue the re-sentencing proceedings of the Appellants was not a departure from our mandate . . . because, put most simply, the mandate specified no particular time for these re-sentencings to occur. The mandate merely remanded the proceedings of the Appellants ‘for re-sentencing consistent with this opinion.’”), *vacated on other grounds*, 544 U.S. 971 (2005); *see also In re Stumes*, 681 F.2d 524, 525 (8th Cir. 1982) (following issuance of mandate, district court had authority to extend time for retrial in view of government’s certiorari petition). A stay would ensure that the parties and this Court do not unnecessarily expend time and resources addressing issues that may yet be resolved or mooted by a decision of the Supreme Court.

In accordance with the foregoing authority, CARCO respectfully requests entry of an order in substantially the form attached hereto staying all proceedings in the District Court pending the filing of CARCO’s petition for writ of certiorari with the Supreme Court of the United States and a final disposition by the Supreme Court of the United States.

Respectfully submitted,

CHAFFE McCALL, L.L.P.

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